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**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

IN REPLY REFER TO:
1800B3-BSH

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~~35X~~ 17 837

Coastal Broadcast Communications, Inc.
17505 Meadow Creek Drive
Eagle River, AK 99577

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4606 Charlestown Terrace, N.W.
Washington, D.C. 20007

In re: K285EF, Kenai, AK
K257DB, Anchor Point, AK
K285EG, Seward, AK
K272DG, Seward, AK
K274AB, Kodiak, AK
K283AB, Soldotna, AK
K272CN, Homer, AK
K285AA, Kodiak, AK
K265CK, Kachemak City, AK

Assignment of Licenses

BALFT-961114TZ
BALFT-961114TX
BALFT-961114TW
BALFT-961114TY
BALFT-961114TF
BALFT-961114TE
BALFT-961114TD
BALFT-961114TC
BALFT-961114TB

Renewal of Licenses

BRFT-951124UT
BRFT-951124ZF
BRFT-951124ZK
BRFT-951124ZG

BRFT-951124ZH
BRFT-951124YU
BRFT-951124YW
BRFT-951124ZJ
BRFT-951124ZE

Dear Applicants and Petitioner:

This is in reference to the applications for license renewal and the applications to assign the above-captioned translator stations from Peninsula Communications, Inc. ("Peninsula") to Coastal Broadcast Communications, Inc. ("Coastal"). A September 11, 1996 letter ruling from the Chief, Audio Services Division ("letter ruling") granted, in part, separate petitions to deny the renewal applications filed by KSRMI, Inc., White Falcon Communications, Inc., King Broadcasters, Inc. and Cobb Communications, Inc. ("Petitioners"). The letter ruling concluded that continued ownership of the translators by Peninsula, licensee of stations KWVV-FM, Homer, Alaska and KPEN-FM, Soldotna, Alaska, would violate 47 C.F.R. Section 74.1232(d), which prohibits the common ownership of an FM translator station whose coverage contour extends beyond the protected contour of its commercial primary station.¹ The letter ruling deferred action on the renewal applications and ordered Peninsula to file assignment applications within sixty days to assign the licenses of the nine translators to unaffiliated parties, in order to comply with Section 74.1232(d). On November 14, 1996, in response to the letter ruling, Peninsula filed applications to assign the nine translator stations to Coastal. The Asset Purchase Agreement between Peninsula and Coastal for the nine translators provides that Peninsula will finance the entire \$100,000 purchase price, with monthly payments at 6% interest being due over a twenty-year period.

These assignment applications do not achieve compliance with Section 74.1232(d). The applications call for Peninsula to provide, at below market interest rates, 100% of the financing for Coastal. This connection is a per se violation of Section 74.1232(d), which prohibits assignment to any entity having any connection with the primary station. See note 1 supra. Accordingly, Section 74.1232(d) prohibits grant of the assignment applications. Since the assignment applications are patently not in accordance with the Commission's rules, and do not include any request for waiver, they will be dismissed in accordance with 47 C.F.R. Section

¹ 47 C.F.R. Section 74.1232(d) states, in pertinent part:

An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorization will not be granted to any person or entity having any interest, whatsoever, or any connection with a primary station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates.

73.3566(a).

We will, however, afford Peninsula a period of ten business days from the date of this letter to file assignment applications which fully comply with 47 C.F.R. Section 74.1232. If the Commission has not received the required assignment applications by that date, the translators' pending renewal applications will be denied, their call signs deleted and Peninsula's authority to operate the translators will be terminated.

Accordingly, for the reasons stated above, the assignment application for K285EF Kenai, Alaska, (BALFT-961114TZ) IS DISMISSED; the assignment application for K257DB, Anchor Point, Alaska, (BALFT-961114TX) IS DISMISSED; the assignment application for K285EG, Seward, Alaska, (BALFT-961114TW) IS DISMISSED; the assignment application for K272DG, Seward, Alaska, (BALFT-961114TY) IS DISMISSED; the assignment application for K274AB, Kodiak, Alaska, (BALFT-961114TF) IS DISMISSED; the assignment application for K283AB, Soldotna, Alaska, (BALFT-961114TE) IS DISMISSED; the assignment application for K272CN, Homer, Alaska, (BALFT-961114TD) IS DISMISSED; the assignment application for K285AA, Kodiak, Alaska, (BALFT-961114TC) IS DISMISSED; and the assignment application for K265CK, Kachemak City, Alaska, (BALFT-961114TB) IS DISMISSED

Sincerely,



Linda Blair, Chief
Audio Services Division
Mass Media Bureau

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**FEDERAL COMMUNICATIONS COMMISSION
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NOV 06 1997

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K265CK, Kachemak City, AK

Assignment of Licenses

BALFT-970701TX
BALFT-970701TT
BALFT-970701TR
BALFT-970701TY
BALFT-970701TU
BALFT-970701TW
BALFT-970701TV
BALFT-970701TS
BALFT-970701TZ

Renewal of Licenses

BRFT-951124UT
BRFT-951124ZF
BRFT-951124ZK
BRFT-951124ZG

BRFT-951124ZH
BRFT-951124YU
BRFT-951124YW
BRFT-951124ZJ
BRFT-951124ZE

Dear Applicants and Petitioner:

This is in reference to the applications for license renewal and the applications to assign the above-captioned translator stations from Peninsula Communications, Inc. ("Peninsula") to Coastal Broadcast Communications, Inc. ("Coastal"). A September 11, 1996 letter ruling from the Chief, Audio Services Division ("letter ruling") granted, in part, separate petitions to deny the renewal applications filed by KSRMI, Inc., licensee of KSRM(AM), Soldotna, Alaska; White Falcon Communications, Inc., former licensee of KSWD(AM);¹ King Broadcasters, Inc., licensee of KSLD(AM) and KKIS-FM, Soldotna, Alaska, and Cobb Communications, Inc., licensee of KVOK(AM) and KRXX(FM), Kodiak, Alaska ("Petitioners"). The letter ruling concluded that continued ownership of the translators by Peninsula, licensee of stations KWVV-FM, Homer, Alaska and KPEN-FM, Soldotna, Alaska, would violate 47 C.F.R. Section 74.1232(d), which prohibits the common ownership of an FM translator station whose coverage contour extends beyond the protected contour of its commercial primary station.² The letter ruling deferred action on the renewal applications and ordered Peninsula to file assignment applications within sixty days to assign the licenses of the nine translators to unaffiliated parties, in order to comply with Section 74.1232(d). Petitioners, and their successors in interest, filed an October 10, 1996 application for review of the letter ruling,³ arguing that continued operation of the translators, in violation of Section 74.1232(d), caused harm to their stations, which compete with KWVV-FM and KPEN-FM.

On November 14, 1996, Peninsula filed applications to assign the nine translator stations to

¹ On June 15, 1996, White Falcon Communications, Inc. assigned the license for KSWD(AM) to Glacier Communications.

² 47 C.F.R. Section 74.1232(d) states, in pertinent part:

An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorization will not be granted to any person or entity having any interest, whatsoever, or any connection with a primary station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates.

³ On October 25, 1996, Peninsula filed an opposition to the application for review and on November 5, 1996, Petitioners filed a reply to the opposition to the application for review.

Coastal (the "November applications"). Petitioners filed a November 18, 1996 petition for extraordinary relief⁴ against these assignment applications, arguing that they did not comply with Section 74.1232(d). Specifically, Petitioners objected to the Asset Purchase Agreement included with the November applications which provided that Peninsula would finance the entire \$100,000 purchase price, with monthly payments at 6% interest due over a twenty-year period. The Chief, Audio Services Division concurred, and by letter dated June 17, 1997, dismissed the November applications pursuant to 47 C.F.R. Section 73.3566(a), as patently not in accordance with the Commission's rules, based on a finding that Peninsula's financing provisions were a per se violation of Section 74.1232(d). The June 17, 1997 letter gave Peninsula ten business days to file assignment applications that would fully comply with Section 74.1232(d).

On July 1, 1997, the above-captioned assignment applications were filed, proposing to assign the nine translators from Peninsula to Coastal, with Coastal paying the entire \$100,000 purchase price at closing.⁵ On August 6, 1997, Petitioners filed a petition to deny these applications, contending that they do not comply with Section 74.1232(d).⁶ For the reasons stated below, we deny the petition to deny, grant the referenced assignment and renewal applications for the nine translators, dismiss, without prejudice, the application for review directed at the September 11, 1996 letter ruling as prematurely filed and dismiss the petition for extraordinary relief, directed against the November 14, 1996 assignment applications, as moot.

Petitioners present two arguments in their petition to deny the above-captioned assignment applications. First, Petitioners assert that the assignment applications cannot be granted "unless and until" the renewal applications for the translators are granted. Petitioner's argue that Peninsula would have no licenses to assign prior to grant of the pending renewals. Second, petitioners challenge the applicant's certification that the proposed assignments will comply with Section 74.1232(d). In this regard, petitioners pose several questions concerning the identity of the principals of Coastal and their relationship to Peninsula. Peninsula includes in its opposition the Declaration of David Buchanan, President of Coastal. Mr. Buchanan states that Coastal is wholly owned by himself and his wife, Judy; that neither of them is related to the owner of Peninsula or any member of his family; that the Buchanans have no prior business dealings with Peninsula and anticipate no involvement other than the subject assignment; and that the terms of the proposed assignment are the result of "arms-length" negotiations. Mr. Buchanan adds that the translators will be operated by Coastal in full compliance with the Commission's rules and that Coastal will not accept any contributions from Peninsula.

⁴ On November 20, 1996, Peninsula filed a motion to strike the petition for extraordinary relief and on November 22, 1996, Petitioners filed an opposition to the motion to strike.

⁵ The assignment applications were initially filed on June 25, 1997, on a former version of the translator assignment application (Form 345). On July 1, 1997, the applicants re-filed the proposed assignments on the most recent Form 345, as revised in February 1997. The caption in Petitioner's August 6, 1997 petition to deny lists the file numbers of the applications as filed on June 25, 1997. We shall treat the petition as timely filed against the above-captioned assignment applications.

⁶ Peninsula filed an opposition on August 15, 1997 and petitioners filed a reply on August 26, 1997.

The record before us demonstrates that grant of the above-captioned assignment applications would comply with Section 74.1232(d). Therefore, we find that grant of these assignment applications and the pending renewal applications is in the public interest. Grant of the renewal applications will be conditioned on the consummation of the assignment applications. This conditioned, concurrent grant of the assignment and renewal applications resolves Petitioner's concern that Peninsula would have nothing to assign "unless and until" the staff granted the related renewal applications. Furthermore, our June 17, 1997 dismissal of the November 14, 1996 assignment applications rendered moot petitioners' November 18, 1996 petition for extraordinary relief, which objected to the grant of the November applications.

Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. Section 309(d)(1), permits Petitioners, as parties in interest, to "file a petition to deny any [broadcast renewal] application" Petitions to deny the renewal applications of six of the nine translators were filed by petitioners. Petitioners' October 10, 1996 application for review, however, in essence, challenges the appropriateness of granting the license renewal applications. Since the September 11, 1996 letter ruling rendered no determination on grant of the renewal applications, Petitioners' October 10, 1996 request for review of a decision regarding the grant of the renewal applications was prematurely filed. As such, the application for review will be dismissed without prejudice to Petitioners' right to appeal the grant of the subject renewal applications.

Accordingly, for the reasons stated above, the assignment application (BALFT-970701TX) and renewal application (BRFT-951124UT) for K285EF Kenai, Alaska, ARE GRANTED; the assignment application (BALFT-970701TT) and renewal application (BRFT-951124ZF) for K257DB, Anchor Point, Alaska, ARE GRANTED; the assignment application (BALFT-970701TR) and renewal application (BRFT-951124ZK) for K285EG, Seward, Alaska, ARE GRANTED; the assignment application (BALFT-970701TY) and renewal application (BRFT-951124ZG) for K272DG, Seward, Alaska, ARE GRANTED; the assignment application (BALFT-970701TU) and renewal application (BRFT-951124ZH) for K274AB, Kodiak, Alaska, ARE GRANTED; the assignment application (BALFT-970701TW) and renewal application (BRFT-951124YU) for K283AB, Soldotna, Alaska, ARE GRANTED; the assignment application (BALFT-970701TV) and renewal application (BRFT-951124YW) for K272CN, Homer, Alaska, ARE GRANTED; the assignment application (BALFT-970701TS) and renewal application (BRFT-951124ZJ) for K285AA, Kodiak, Alaska, ARE GRANTED; and the assignment application (BALFT-970701TZ) and renewal application (BRFT-951124ZE) for K265CK, Kachemak City, Alaska, ARE GRANTED. Grant of the assignment and renewal applications is subject to the conditions set forth below.⁷ Furthermore, the November 18, 1996 petition for

⁷ The Commission recently modified FM translator license terms to run concurrently with FM primary stations. Report and Order Modifying Renewal Dates for Certain Stations Licensed Under Part 74 of the Commission's Rules, 9 FCC Rcd 6504 (1994). Consequently, the expiration for the renewal period pertinent to the above-referenced renewal applications occurs on February 1, 1998. Accordingly, Peninsula filed renewal applications for the nine subject translators on September 30, 1997. Where assignment and license renewal applications are pending, the Mass Media Bureau policy is to grant otherwise grantable assignment applications prior to the time for acting upon renewal applications, with the condition that consummation of the assignment application not occur until

extraordinary relief filed by petitioners IS DISMISSED AS MOOT and the October 10, 1996 application for review IS DISMISSED WITHOUT PREJUDICE.

GRANT OF EACH OF THE ABOVE-REFERENCED LICENSE RENEWAL APPLICATIONS IS CONDITIONED ON THE CONSUMMATION ON EACH OF THE ABOVE-REFERENCED AND ASSOCIATED LICENSE ASSIGNMENT APPLICATIONS. FAILURE TO MEET THIS CONDITION RENDERS EACH GRANT NULL AND VOID.

CONSUMMATION OF EACH OF THE ABOVE-REFERENCED ASSIGNMENT APPLICATIONS IS CONDITIONED ON GRANT OF THE ASSOCIATED RENEWAL APPLICATIONS FILED SEPTEMBER 30, 1997. [See, n 7, infra.]

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Blair".

Linda Blair, Chief
Audio Services Division
Mass Media Bureau

the grant of the associated renewal application. The conditions imposed herein conform our action to this policy.



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Federal Communications Commission

FCC 98-314

Before the
Federal Communications Commission
Washington, D.C. 20554

In re: Applications of)

Peninsula Communications, Inc.)

For Renewal of Licenses for FM Translator
Stations)File Nos. BRFT-951124UT, YU, ZG, ZH, ZJ,
ZK, BRFT-970930U5, YA through YH and
BPFT-970616TK and TLK285EF, Kenai, K283AB, Kenai/Soldotna,
K274AB and K285AA, Kodiak,
K272DG and K285EG, Seward, Alaska)

MEMORANDUM OPINION AND ORDER

Adopted: November 24, 1998

Released: December 10, 1998

By the Commission:

1. The Commission has before it: (1) an application for review filed December 15, 1997 by Cobb Communications, Inc. ("Cobb"), Glacier Communications, Inc. ("Glacier"), KSRM, Inc. and King Broadcasters, Inc. (collectively referred to as "Petitioners"), challenging the Mass Media Bureau's ("Bureau") action granting Peninsula Communications, Inc.'s ("Peninsula") above-captioned 1995 applications for renewal of the licenses of six commercial FM translator stations, subject to Peninsula's divestiture of the translators, *Letter to Jeffrey D. Southmayd, Esq.*, Ref. No. 1800B3-BSH (Chief, Audio Services Division, November 6, 1997) ("11/6/97 letter");¹ (2) Peninsula's above-captioned 1997 renewal applications, Petitioners' January 8, 1998 petition to deny the 1997 renewal applications for the six subject translators, and Peninsula's February 6, 1998 motion to strike the petition to deny;² and

¹ Petitioners also filed a petition for reconsideration of the 11/6/97 letter on the same date as the application for review, in violation of Section 1.104(b) of the Commission's rules, which permits the filing of "either a petition for reconsideration or an application for review (but not both)[.]" 47 C.F.R. § 1.104(b). We believe the public interest would be better served in this case by responding to the application for review. See *Charles F. Murray*, 6 FCC Rcd 5805, 5806 n. 2 (1991). The petition for reconsideration challenges the Bureau's dismissal as prematurely filed of an earlier application for review that raised substantially the same issue as the instant one. See *infra*, ¶ 5. Thus, by addressing the instant application for review, we will also effectively address the merits of the earlier one and render moot the procedural issues raised in the petition for reconsideration. Accordingly, we will dismiss the petition for reconsideration.

² In its motion to strike, Peninsula argues that the petition to deny should be summarily dismissed because it was not timely filed as prescribed in 47 C.F.R. § 73.3516(e). In our discretion, we will treat the pleading as an informal objection pursuant to 47 C.F.R. § 73.3587, because we conclude that the public interest would be served by addressing the issues raised. See, e.g., *Golden West Broadcasters*, 46 FCC 2d 1135 n. 1 (1974). Accordingly, we will deny Peninsula's motion to strike.

(3) Peninsula's June 16, 1997 minor modification applications to use an alternative signal delivery system for two of the subject translators and related requests for waiver of 47 C.F.R. § 74.1231(b).³

2. *Background.* This case implicates the Commission's eligibility and signal delivery requirements for FM translators. 47 C.F.R. §§ 74.1231(b), 74.1232(d). A brief discussion of the history of these rules may be helpful in understanding this case. In *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Report and Order* in MM Docket 88-140, 5 FCC Rcd 7212, 7213-14 (1990) ("Report and Order"), recon. den., *Memorandum Opinion and Order*, 8 FCC Rcd 5093, 5093-94 (1993) ("MO&O"), the Commission tightened and clarified a number of translator rules in order to confine or return the service to its original secondary role. Among other things, the Commission revised Section 74.1232(d) to provide that authorization for an "other area" translator will not be granted to persons interested in or connected with the commercial "primary FM station." 47 C.F.R. § 74.1232(d); *Report and Order*, 5 FCC Rcd at 7214-16.⁴ This provision became effective on June 1, 1991, with pre-existing translators required to comply no later than June 1, 1994. *Report and Order*, 5 FCC Rcd at 7231-32, modified, 6 FCC Rcd 2334 (1991). The Commission provided this three-year grace period for enforcement of the revised rule in order to avoid unnecessary disruption of service to the public. *Report and Order*, 5 FCC Rcd at 7232. In addition, the Commission concluded that waiver of Sections 74.1232(d) or 74.1231(b), the signal delivery rule,⁵ should be available only upon a showing of service to a "white area," that is, an area outside the coverage contour of any full-time aural broadcast service. *Id.* at 7216, 7221; see *MO&O*, 8 FCC Rcd at 5094-95 (1993) (rejecting contention that waivers should be available for the provision of translator service to "underserved" areas with fewer than five full-time aural services). Prior to the MM Docket 88-140 proceeding, however, and even after the Commission's adoption of the *Report and Order*, the staff sometimes waived these and other rules for Alaska translators based on the assumption that "Alaska's unique terrain, its remoteness and isolation, justify special treatment[.]" *Wrangell Radio*

We note that the brevity of the time period between the filing of the 1995 and 1997 renewal applications is a result of the Commission's decision to modify FM translator license terms to run concurrently with the terms of FM primary stations. See *Report and Order* in MM Docket No. 92-168, 9 FCC Rcd 6504 (1994).

³ In accordance with Section 0.5(c) of the Commission's rules, the Bureau has referred the above-captioned 1997 renewal applications and related pleadings, as well as the minor modification applications and related waiver requests, to the Commission for resolution in conjunction with the application for review. See 47 C.F.R. § 0.5(c). The petition to deny raises substantially the same issue as the application for review, as well as another issue which implicates the minor modification applications and related waiver requests.

⁴ A "primary FM station" is the station whose signal a translator retransmits. 47 C.F.R. § 74.1201(d). An "other area" or non-fill-in translator is one whose coverage contour extends beyond the protected service contour of its primary station. *Id.* Section 74.1232(d) previously allowed common ownership of a primary FM station and other area translator provided the translator did not operate within the protected service contour of another commercial FM station licensed to a different community. See *Report and Order*, 5 FCC Rcd at 7214.

⁵ Section 74.1231(b) provides that other area translators may only retransmit primary FM station or translator signals received directly over the air. 47 C.F.R. § 74.1231(b), *Report and Order*, 5 FCC Rcd at 7220-21.

Group, 75 FCC 2d 404, 407 (1979); see, e.g., *Letter to Peninsula Communications, Inc.*, Ref. No. 8930-MER (Chief, Auxiliary Services Branch, February 18, 1992) ("2/18/92 letter").

3. Peninsula owns a total of nine translators in Alaska, as well as the translators' two primary FM stations, KPEN-FM, Soldotna and KWVV-FM, Homer, Alaska. Petitioners have challenged the Bureau's action with regard to only six of these translators and, therefore, our discussion here is limited to those six: K285EF, Kenai, K283AB, Kenai/Soldotna, K274AB and K285AA, Kodiak ("Kodiak translators"), and K272DG and K285EG, Seward ("Seward translators"). All six are "other area" translators, that is, they extend the coverage of their commonly-owned primary stations' contours. Moreover, all but the two Kenai-area translators must receive the signals of their primary stations by delivery means other than off-air reception. Thus, under current rules, absent waiver of Section 74.1232(d), Peninsula cannot own any of these six translators and, absent waiver of Section 74.1231(b), no one can operate the Seward and Kodiak translators using the non-off-air delivery systems which these translators require.

4. Peninsula obtained authorizations for three of the subject translators -- K283AB, Kenai/Soldotna and the two Kodiak translators -- prior to June 1, 1991, the effective date of the *Report and Order*. It requested waiver of former Section 74.1232(d) in connection with K283AB because the translator would operate within the protected service contour of another commercial FM station licensed to a different community. See *supra*, n. 4. The staff granted the authorization without ruling on the waiver request. Waivers of former Section 74.1232(d) also were necessary for the two Kodiak translators, but were not requested by Peninsula, and the staff granted the authorizations without reference to the rule.⁶ The other three subject translators -- K285EF, Kenai and the two Seward translators -- were initially authorized after June 1, 1991. The staff granted the K285EF authorization without reference to the revised ownership rule in Section 74.1232(d), and granted waivers of that rule for the two Seward translators in the 2/18/92 letter, citing the *Wrangell* policy of special treatment for Alaska translators. On the same ground, the staff also waived the off-air delivery requirement of Section 74.1231(b) for the Seward translators, thus allowing Peninsula to utilize an alternative signal delivery system for the Seward translators.⁷

5. Following receipt of Peninsula's 1995 renewal applications, the Bureau determined that Peninsula had obtained valid waivers of Section 74.1232(d) only for the two Seward translators and, therefore, had been operating the four other subject translators in violation of Section 74.1232(d) since June 1, 1994, when the three-year grace period for application of the revised rule ended. *Letter to Jeffrey D. Southmayd, Esq.*, Ref. No. 1800B4-AJS (Chief, Audio Services Division, September 11, 1996) ("9/11/96 letter"). Relying on the Commission's pronouncements in MM Docket 88-140, the Bureau also found that neither grant of new Section 74.1232(d) waivers, nor continuation of the Section 74.1232(d) waivers previously granted for the Seward translators, was warranted.

⁶ On September 6, 1991, the staff also granted major modification applications for two of the pre-1991 translators, K283AB and K274AB, without waiver requests or reference to Section 74.1232(d).

⁷ Unlike the Seward translators, the Kodiak translators did not require waiver of the off-air delivery requirement of Section 74.1231(b) until recently. See *infra*, § 12.

Accordingly, the Bureau ordered Peninsula to divest the six translators.⁸ The Bureau explained that it was not terminating the service provided by the translators or otherwise sanctioning Peninsula for violation of Section 74.1232(d) due to the staff's previous actions with regard to the translators, including special treatment of Alaska translators. *See supra*, ¶ 4. In view of these circumstances, the Bureau reasoned that Peninsula reasonably could have believed itself to be in compliance with the Commission's translator ownership restrictions. The Bureau did not address Peninsula's Section 74.1231(b) waivers for the Seward translators in its 9/11/96 letter.

6. On November 6, 1997, in accordance with its findings in the 9/11/96 letter, the Bureau granted both the 1995 renewal applications and Peninsula's applications to assign the translators to Coastal Broadcast Communications, Inc. ("Coastal"), conditioning grant of the 1995 renewal applications on consummation of the assignments. 11/6/97 letter at 4-5.⁹ The Bureau also conditioned approval of the assignments on grant of the 1997 renewal applications.¹⁰ In addition, the Bureau denied Petitioners' August 6, 1997 petition to deny the assignment applications and dismissed as prematurely filed Petitioners' October 10, 1996 application for review of the 9/11/96 letter, stating that the Bureau's deferral of the 1995 renewal applications therein was not an action subject to appeal. *See supra*, n. 1.

7. In the instant application for review, Petitioners contend that the Bureau's finding that Peninsula is ineligible to continue to hold the subject translator licenses necessitates revocation of the licenses, and that the Bureau could not avoid this necessity by conditioning grant of the 1995 renewal applications on Peninsula's divestiture of the licenses. In support of this contention, Petitioners rely on the Commission's longstanding policy, as approved in *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C.Cir. 1964), that "assignment of broadcast authorization will not be considered until the Commission has determined that the assignor has not forfeited the authorization" *Id.* Similarly, Petitioners contend in their petition to deny that under the *Jefferson Radio* policy, grant of the 1997 renewal applications is precluded by the Bureau's finding. Furthermore, Petitioners contend in their petition to deny that the 1997 renewal applications for the Kodiak and Seward translators should be denied because continuation or grant (in the case of the Kodiak translators) of Section 74.1231(b)

⁸ Specifically, the Bureau deferred action on the 1995 renewal applications for a period of 60 days, during which time it gave Peninsula the opportunity to file assignment applications for the translators in accordance with Section 74.1232(d). Should the required assignment applications be filed and granted, the Bureau stated that it would grant the 1995 renewal applications conditioned on consummation of the assignments.

⁹ The Bureau previously dismissed Peninsula's November 14, 1996 applications to assign the translators to Coastal, finding that, based on the proposed financing of the deal, Peninsula would retain an interest in the translators in violation of Section 74.1232(d). *See Letter to Jeffrey D. Southmayd, Esq.*, Ref. No. 1800B3-BSH (Chief, Audio Services Division, June 17, 1997) (providing ten additional days for submission of assignment applications in compliance with Section 74.1232(d)). In the 11/6/97 letter, the Bureau dismissed as moot Petitioners' November 18, 1996 petition for extraordinary relief concerning the November 14, 1996 assignment applications.

¹⁰ The renewal period pertinent to the 1997 renewal applications expired on February 1, 1998. Accordingly, these applications were not eligible for grant at the time of the 11/6/97 letter.

waivers for their operation is not justified under the Commission's rules.

8. *Discussion -- Assignment of Translators.* Under the Commission's *Jefferson Radio* policy, action on an assignment or transfer application generally must be deferred where there are unresolved basic character qualifications issues concerning the seller in a renewal proceeding for the station sought to be transferred. See, e.g., *RKO General, Inc.*, 3 FCC Rcd 5057, 5060-61 (1988), *appeal dismissed sub nom. Los Angeles Television*, FCC No 88-1673 (D.C.Cir. August 4, 1989). Established on the premise that "a licensee . . . has nothing to assign or transfer unless and until he has established his own qualifications[.]" the policy "stems from the Commission's concern that, where an evidentiary hearing has been designated on a renewal application or show cause order to determine disqualifying questions, permitting the suspected wrongdoer to evade a sanction by transferring his interest or assigning the license without hearing will diminish the deterrent effect which revocation and renewal proceedings should have on broadcast licensees." *Northland Television, Inc.*, 42 RR 2d 1107, 1110 (1980); see *RKO General, Inc.*, 3 FCC Rcd at 5060-61.

9. Petitioners' reliance on the *Jefferson Radio* policy is misplaced because, consistent with its underlying concern for deterrence, the Commission has stated that the policy is applicable only where an applicant's basic character qualifications are at issue. *Pinelands, Inc.*, 7 FCC Rcd 6058, 6061 n. 11 (1992) (citing *Boise Valley Broadcasters, Inc.*, 53 FCC 2d 823, 824-25 (1975)); *Questions Concerning Basic Qualifications of Broadcast Applicants*, 28 RR 2d 705, 705-06 (1973). Although any violation of the Communications Act or the Commission's rules raises character concerns, all violations do not rise to the level of potentially disqualifying an applicant. See *Virginia RSA 6 Cellular Ltd. Partnership*, 6 FCC Rcd 405, 407 (1991) (citing *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1210 ("Policy Statement") (subsequent history omitted)). Here, no substantial and material questions of fact have been raised in the subject renewal proceedings regarding Peninsula's basic character. There is no evidence that Peninsula attempted to deceive or mislead the Commission as to its compliance with Section 74.1232(d). Indeed, the staff's previous actions reasonably could have led Peninsula to believe that the Alaska translators were being accorded special treatment. See *infra*, ¶ 14. Although Peninsula had valid waivers of Section 74.1232(d) only for the two Seward translators and, therefore, violated the Commission's rules by operating the other four subject translators without valid waivers of the rule, there is nothing in the record to suggest a likelihood that in the future it will not deal truthfully with the Commission and comply with the Communications Act and the Commission's rules and policies. See *Virginia RSA 6 Cellular Ltd. Partnership*, 6 FCC Rcd at 407 (premature construction did not warrant inquiry into applicant's fitness to be a Commission licensee where violations apparently were inadvertent and there was no evidence of misrepresentation or lack of candor). Therefore, the *Jefferson Radio* policy is inapposite here.

10. Of course, the Bureau's findings did render Peninsula ineligible to continue to hold the subject translator licenses. In the absence of an unresolved basic character qualifications issue, however, there can be no doubt as to the Commission's authority to cure or remedy this situation by granting the renewal applications conditioned on divestiture of the translators. See 47 U.S.C. § 303(r) (authorizing the Commission to "prescribe such restrictions and conditions" as may be necessary to carry out its duties); *The Petroleum V. Naby Corp.*, 10 FCC Rcd 6029, 603 (Rev.Bd. 1995) (conditioning grant of license renewal and transfer applications on divestiture of stock ownership and

corporate membership resulting from illegal transfers), *recon. granted in part*, 10 FCC Rcd 9964, *remanded on other grounds*, 11 FCC Rcd 3494 (1996); *Spanish Int'l Communications Corp.*, 2 FCC Rcd 3336, 3339 (1987) (in case involving violation of alien ownership restrictions, approving settlement agreement providing for grant of renewal applications subject to immediate transfer of stations), *aff'd sub nom. Coalition for the Preservation of Spanish B'casting v. FCC*, 931 F.2d 73 (D.C.Cir.), *cert. den.*, 502 U.S. (907) (1991). Accordingly, we will deny the instant application for review, as well as the petition to deny to the extent that it raises the same argument based on the *Jefferson Radio* policy.

11. *Petition to Deny – Kodiak and Seward Translators.* Petitioners also contend that the 1997 renewal applications for the Kodiak and Seward translators should be denied because grant or continuation of Section 74.1231(b) waivers for their operation is not justified under the Commission's rules. Section 74.1231(b) provides that other area translators may only retransmit primary FM station or translator signals received directly over the air. 47 C.F.R. § 74.1231(b); *Report and Order*, 5 FCC Rcd at 7220-21. As in the case of the translator ownership rule, the Commission restricted waivers of this rule to "white area" situations in the *Report and Order*. *Id.*; see *supra*, ¶ 2. Nevertheless, the staff waived this rule in the 2/18/92 letter for Peninsula's operation of the two Seward translators in the absence of a "white area" showing, relying on *Wrangell*, Peninsula's showing that an alternative signal delivery system was the only means by which the translators could be operated, and the fact that the translators would provide a first commercial FM service to Seward. Petitioners argue that the waivers should be discontinued because Seward has a full service AM station, KSWD(AM), licensed to Petitioner Glacier, and "competition from the Seward translators makes it difficult for KSWD to survive and prosper in a community as small as Seward." *Petition to Deny* at 6. Petitioners also assert that Glacier has obtained a construction permit for a FM station on a channel allotted to Seward, and that the translator operations threaten the financial viability of the unbuilt, non-operational FM station.¹¹ We note that discontinuation of the waivers would require termination of the Seward translator operations because, unlike the previously-discussed Section 74.1232(d) violations, signal delivery rule violations could not be cured by assignment of the translators to a different licensee.

12. With regard to the two Kodiak translators, Coastal (the authorized assignee) has filed minor modification applications and requests for waiver of Section 74.1231(b), representing that the two off-air reception antennas that were used to deliver the translators' signals to Kodiak for the past 12 years recently were destroyed, and that an alternative microwave or satellite signal delivery system is the only means by which the translators can continue to retransmit their respective primary stations. See *supra*, ¶ 3. Coastal asserts that the translators provide a valuable service to the community of Kodiak, serving a combined total of nearly 7,000 listeners per week, and that the staff granted waivers for the Seward translators under similar circumstances. Petitioners, however, argue that the waiver requests should be denied because the translators threaten the economic viability of two local full service stations, KVOK(AM) and KJJZ(FM), Kodiak, both licensed to Petitioner Cobb.

13. We conclude that grant of Section 74.1231(b) waivers for the Kodiak translators is not

¹¹ Commission records indicate that William M. Holzheimer, Glacier's President, was issued a construction permit for KPFFN(FM), Channel 290, Seward on May 16, 1997 (File No. BPH-950417MB).

warranted under the Commission's translator rules. In restricting waivers of Sections 74.1231(b), 74.1232(d) and other service rules to "white area" situations, the Commission sought to promote incentives for full service FM and AM broadcast station development and prevent such stations from being forced to compete economically with translators. See *Report and Order*, 5 FCC Rcd at 7213-16, 7220-21; *MO&O*, 8 FCC Rcd at 5093-95. The Commission's action left no room for waiver of these rules for the operation of other area translators in Alaska or elsewhere in the absence of "white area" showings. See *Report and Order*, 5 FCC Rcd at 7213-16, 7220-21; *MO&O*, 8 FCC Rcd at 5093-95; cf. *Letter to Kevin C. Boyle, Esq.*, 11 FCC Rcd 2348, 2350 (Acting Chief, Audio Services Division, 1996) (staff denied Section 74.1232(d) waivers for operation of translators providing service to "gray" or "underserved" areas of rural Utah).¹² Our engineering staff review has determined that the Kodiak translators do not provide service to any "white area" not served by the full service AM and FM stations in the community. Accordingly, grant of Section 74.1231(b) waivers for the Kodiak translators is not warranted under the Commission's rules. We shall, therefore, deny Coastal's minor modification applications and related waiver requests for the Kodiak translators.¹³

14. The situation is different with regard to the two Seward translators. As indicated above, initial grant of a waiver would not be justified here absent a showing that the Seward translators provide "white area" service, and we disagree with the staff's application of *Wrangell* in the 2/18/92 letter. See *supra*, n. 11. Nevertheless, over six years have elapsed since the Bureau's waivers of the current translator rules became final, and the circumstances have not changed since the waivers were granted: the community of Seward still has only one full service commercial station, KSWD(AM), and the Seward translators continue to provide Seward's only commercial FM service. Discontinuation of the Section 74.1231(b) waivers would require termination of the Seward translator operations and a

¹² The Commission did state in a footnote to its signal delivery discussion in the *Report and Order* that "[w]e intend that our decisions herein not alter in any fashion the special treatment we accord Alaska[.]" citing *Wrangell*. *Report and Order*, 5 FCC Rcd at 7245, n. 59. Read in context, however, this statement expresses the Commission's willingness to allow Alaskan commercial translators providing *fill-in service* to use satellite rather than terrestrial delivery of signals upon an appropriate showing that no terrestrial means is available due to the lack of microwave, phone company circuits, dedicated fiber optic cable or other communications services. See *id.* at n. 59 and accompanying text. *Wrangell* provides no justification for waiver of the translator rules for other area translators operating in non-"white areas." See *Wrangell*, 75 FCC 2d at 407 (waiving various rules for the operation of 10-watt television translators in Alaskan communities where there was no off-the-air television programming available).

¹³ Peninsula notified the staff by letter dated October 29, 1998 that the Kodiak translators, which, according to the Commission's records, had been silent since November 12, 1997, returned to the air as of October 29, 1998 "rebroadcasting the signal of noncommercial, educational FM translator K296DC, Kodiak, Alaska, licensed to Kodiak Community Church." Peninsula subsequently confirmed by letter dated November 10, 1998 that it has obtained the consent of Kodiak Community Church and that such rebroadcast represents a change in primary stations for the Kodiak translators. Thus, although the Kodiak translators will no longer be rebroadcasting KPEN-FM, Soldotna and KWVV-FM, Homer, Alaska, see *supra*, ¶ 3, they are now operating in accordance with our translator rules. We shall, therefore, deny the petition to deny the 1997 renewal applications for the Kodiak translators and grant the renewal applications.

loss of existing service to the public.¹⁴ In view of these circumstances, we do not believe that termination of the Seward translator operations would serve the public interest at this time. We note, however, that if and when the unbuilt, nonoperational full service FM station authorized in Seward commences operation, *see supra*, n. 10, we may consider whether the circumstances under which the waivers were granted have so changed as to warrant termination of the Seward translator operations. Accordingly, we find that the public interest would be served by renewal of the Seward translator authorizations and, therefore, will grant the 1997 renewal applications for these translators with the same condition as the Bureau attached to grant of the 1995 renewal applications. Likewise, we will grant the 1997 renewal applications for the remaining two subject translators, K285EF, Kenai and K283AB, Kenai/Soldotna, as to which Petitioners raised no signal delivery issues. We also will grant the 1997 renewal applications for the three additional Peninsula translators in Alaska whose authorizations Petitioners have not challenged (K257DB, Anchor Point, K272CN, Homer and K265CK, Kachemak City).

15. For the foregoing reasons, IT IS ORDERED that Petitioners' December 15, 1997 application for review IS DENIED, and Petitioners' December 15, 1997 petition for reconsideration IS DISMISSED pursuant to 47 C.F.R. § 1.104(b).

16. IT IS FURTHER ORDERED that Peninsula's February 6, 1998 motion to strike IS DENIED, and Petitioners' January 8, 1998 petition to deny IS GRANTED TO THE EXTENT INDICATED ABOVE, and IS DENIED in all other respects.

17. IT IS FURTHER ORDERED that Coastal's minor modification applications (File Nos. BPFT-970616TK, TL) and related requests for waiver of 47 C.F.R. § 74.1231(b) for translators K274AB and K285AA, Kodiak ARE DENIED.

18. IT IS FURTHER ORDERED that Peninsula's 1997 applications for the renewal of the licenses of translators K257DB, Anchor Point, K272CN, Homer, K265CK, Kachemak City, K285EF, Kenai, K283AB, Kenai/Soldotna, K274AB and K285AA, Kodiak, and K272DG and K285EG, Seward, Alaska (File Nos. BRFT-970930US, YA through YH) ARE GRANTED, conditioned on consummation

¹⁴ The Commission has imposed a freeze on new and major modification applications for FM translators, *see Implementation of Section 309(j) of the Communications Act, Notice of Proposed Rule Making* in MM Docket 97-397, 12 FCC Rcd 22363, 22388 (1997), and, in any case, staff engineering review indicates that no full service FM station is located close enough to Seward to enable its signal to be retransmitted directly over the air by a translator. Thus, the commercial FM service provided by the Seward translators cannot be replaced except by a new full service commercial FM station licensed to Seward.

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of the authorized assignments of the translators (File Nos. BALFT-970701TR through TZ).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

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Federal Communications Commission

FCC 00-45

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	
Peninsula Communications, Inc.)	
)	
for Renewal of Licenses for FM Translator)	File Nos. BRFT-951124UT, YU, YW,
Stations)	ZE through ZK, BALFT-970701TR through TZ,
)	BRFT-970930U5, YA through YH, and
K285EF, Kenai, K283AB; Kenai/Soldotna,)	BPFT-970616TK and TL
K274AB and K285AA, Kodiak;)	
K272DG and K285EG, Seward;)	
K257DB, Anchor Point;)	
K265CK, Kachemak City; and)	
K272CN; Homer, Alaska)	

MEMORANDUM OPINION AND ORDER

Adopted: February 9, 2000

Released: February 14, 2000

By the Commission:

1. The Commission has before it petitions for reconsideration filed by Glacier Communications, Inc. ("Glacier") and Peninsula Communications, Inc. ("Peninsula") on December 18, 1998 and January 11, 1999, respectively, and various responsive pleadings.¹ Peninsula is the licensee of nine FM Alaskan translator stations and of two full service FM Alaskan stations, KPEN-FM, Soldotna and KWVV-FM, Homer, that those translators rebroadcast. Glacier is the permittee of KPFN(FM), a full-service FM station in Seward, Alaska, currently operating on program test authority and with a license application pending at the Commission.

2. Glacier and Peninsula both request reconsideration of a December 10, 1998, decision in which the Commission denied an Application for Review in this proceeding *Peninsula Communications, Inc.*, 13 FCC Rcd 23992 (1998) ("*Peninsula Order*"). In the *Peninsula Order*, the Commission addressed the challenge of petitioners Glacier, Cobb Communications, Inc., King Broadcasters, Inc., and KSRM, Inc., to a Mass Media Bureau action granting conditionally the renewal applications of six of Peninsula's nine translators: K285EF, Kenai, K283AB; Kenai/Soldotna, K274AB and K285AA, Kodiak; and K272DG and K285EG, Seward. Specifically, the Commission affirmed the Bureau's determination that Peninsula's ownership of the Alaskan translators was inconsistent with the ownership restrictions of the revised FM

¹ In addition, the following pleadings were filed: Cobb Communications, Inc.'s ("Cobb") Opposition to Peninsula's Petition for Reconsideration filed on January 22, 1999; Glacier's Opposition to Peninsula's Petition for Reconsideration filed on January 26, 1999; Peninsula's Reply to Glacier's Opposition filed on February 4, 1999; Peninsula's Reply to Cobb's Opposition filed on February 4, 1999; Peninsula's Petition for Leave to File Supplement to Petition for Reconsideration filed on March 5, 1999; Peninsula's Supplement to Petition for Reconsideration filed on March 5, 1999; Peninsula's Motion for Stay filed on March 5, 1999; Cobb's Opposition to Motion to Stay filed on March 10, 1999; Cobb's Opposition to Petition for Leave to File Supplement to Petition for Reconsideration filed on March 18, 1999; Glacier's Opposition to Petition for Leave to File Supplement to Petition for Reconsideration filed on March 29, 1999.

translator rules and thus required divestiture, conditioning the renewal of the translator licenses on the consummation of their assignments to an unrelated party. See 47 C.F.R. 74.1232(d) (prohibiting common ownership of an FM translator station and a "primary" commercial FM station, i.e., a station whose signal is retransmitted by a translator, where the translator's coverage contour extends beyond the primary station's protected contour). Peninsula now seeks reconsideration of this decision. Additionally, the Commission denied the request by Peninsula's authorized assignee Coastal Broadcast Communications, Inc. for waiver of the off-air signal delivery requirement for K274AB and K285AA, Kodiak. 47 C.F.R. § 74.1231(b) (requiring that "other-area" or "non-fill-in" translators, i.e., translators whose predicted coverage contour extends beyond the primary station's coverage contour, retransmit only signals received directly over the air). Peninsula also appeals this decision. Regarding waivers for K272DG and K285EG, Seward, the Commission found that discontinuation of previously-granted off-air signal delivery waivers was not warranted at that time, but noted that it might consider whether changed circumstances required a different result if and when an unbuilt full service FM station authorized in Seward became operational. Glacier and Peninsula both appeal this later decision. Glacier argues that termination of the waivers is warranted since it is now operating a full service FM station in Seward while Peninsula seeks a continuation of the waivers for the entire current license term, until 2006.

3. Peninsula's Pleadings. Pursuant to 47 C.F.R. § 1.106(b)(2), the Commission will entertain a petition for reconsideration of an order denying an application for review only if the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters or the petition relies on facts unknown to the petitioner until after his last opportunity to present such matters and those facts could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

4. Generally, Peninsula argues the unfairness of the required divestitures and the denial or termination of 47 C.F.R. § 74.1231(b) waivers. None of the arguments it raises meet the standards of 47 C.F.R. § 1.106(b)(2). Accordingly, Peninsula's Petition for Reconsideration is dismissed.² 47 C.F.R. § 1.106(b)(3).

5. In light of this action, we also dismiss as moot Peninsula's March 5, 1999, motion to stay its obligation to consummate the assignment of licenses and assets of the nine translators. Peninsula has already delayed consummation for more than a full year since release of the *Peninsula Order*. 47 C.F.R. § 1.106(n) (filing of a petition for reconsideration does not stay a Commission order). In fact, more than five years have elapsed since the expiration of the three-year grace period for coming into compliance with the revised translator rules and more than two years have elapsed since the Commission granted assignment applications that would bring Peninsula into compliance. We are compelled at this point to direct the staff, if Peninsula does not comply with the divestiture requirements within 30 days from the release date of this *Order*, to rescind the November 6, 1997 and December 10, 1998 grant of license renewal applications for failure to meet a Commission imposed condition, to cancel the relevant call signs, and to terminate operating authority.³

² Peninsula filed a request to supplement its petition for reconsideration and a supplement based on the release of the *Creation of a Low Power Radio Service, Notice of Proposed Rule Making*, MM Docket No. 99-25, 14 FCC Rcd 2471 (1999). We deny that request and dismiss the supplement. The *NPRM* is unrelated to the established policies underlying FM translators and Peninsula's attempt to rely on it to avoid the restrictions of 47 C.F.R. § 1.106(f) and 47 C.F.R. § 1.106(b)(2) is unavailing.

³ Certified notice of consummation should be mailed directly to Federal Communications Commission, Mass Media

6. Glacier's Pleadings. Glacier argues that waivers of 47 C.F.R. § 74.1231(b), requiring "non-fill-in" translators to retransmit only signals received directly over the air, should be discontinued for translators K272DG and K285EG, licensed to Seward, because Glacier's full service station KPFN(FM), also licensed to Seward, is now fully operational. Hence, according to Glacier, the Commission's justification for continuing the translator signal delivery waivers is no longer valid.

7. In the *Peninsula Order*, we noted that initial grant of the 47 C.F.R. § 74.1231(b) waivers was in fact erroneous because there was no showing that the waivers were necessary to provide service to white areas. We also noted, however, that the off-air signal delivery waivers had been in effect for several years since the translator rules were revised and that circumstances had not changed since the waivers were granted. Specifically, we indicated that "the community of Seward . . . has only one full service commercial station, KSWD(AM), and the Seward translators continue to provide Seward's only commercial FM service." *Peninsula Order*, 13 FCC Rcd at 23998. We also noted that discontinuation of the waivers would result in a loss of existing service which could not be replaced except by a new full service commercial station licensed to Seward, *id.* at 23998-99, but plainly stated that "if and when the unbuilt, nonoperational full service FM station [KPFN] authorized in Seward commences operation . . . we may consider whether the circumstances under which the waivers were granted have so changed as to warrant termination of the Seward translator operations." *Id.* at 23999

8. Station KPFN has now been constructed and has filed a license application, which we grant below. As explained in detail in the *Peninsula Order*, the very purpose of our translator rule revisions was to return the translator service to its original secondary role and "to promote incentives for full service FM and AM broadcast development and prevent such stations from being forced to compete economically with translators." *Peninsula Order* 13 FCC Rcd at 23998 citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Report and Order* in MM Docket 88-140, 5 FCC Rcd 7212, 7213-16, 7220-21 (1990) ("*Report and Order*"), *recon den., Memorandum Opinion and Order*, 8 FCC Rcd 5093, 5093-95 (1993) ("*MO&O*"). As also explained in the *Peninsula Order*, we have previously specifically rejected the contention that waivers should be available for the provision of translator service to "underserved" areas with fewer than five full-time aural services *Peninsula Order*, 13 FCC Rcd at 23993 citing *MO&O*, 8 FCC Rcd at 5094-95. Rather, waivers of sections 74.1231(b) and 74.1232(d) are available only upon a showing of service to a "white area," that is, an area outside the coverage contour of any full-time aural broadcast service. *Peninsula Order*, 13 FCC Rcd at 23993 citing *Report and Order*, 5 FCC Rcd at 7216, 7221; *Id.* at 23998, n.12 citing *Report and Order*, 5 FCC Rcd 7245, n.59.

9. Our independent engineering analysis confirms that the two Seward translators at issue here do not serve any white areas. Moreover, Seward now has not only a full service AM station, KSWD(AM), but also a new full service FM station, KPFN. KPFN claims that Peninsula's Seward translators are taking between \$4,000 and \$6,000 per month in radio revenues out of Seward, which is a community of fewer than 5,000 people with limited sources of advertising revenue. Peninsula does not dispute this claim. Given the totality of circumstances, we conclude that waiver of 47 C.F.R. § 74.1231(b), permitting Peninsula to continue to deliver a distant signal to Seward, would be a clear detriment to the continued viability of full service broadcast stations licensed to Seward. Accordingly, those waivers will be terminated 60 days from the release date of this *Order*.

10. Accordingly, IT IS ORDERED, that pursuant to 47 C.F.R. § 1.106(b)(3), the Petition for

Reconsideration filed by Peninsula Communications, Inc. IS DISMISSED.

11. IT IS FURTHER ORDERED, that pursuant to 47 C.F.R. § 1.106(c)(1), the Petition for Partial Reconsideration filed by Glacier Communications, Inc., IS GRANTED.

12. IT IS FURTHER ORDERED, that pursuant to 47 C.F.R. § 1.106(f), Peninsula Communications, Inc.'s Petition for Leave to File Supplement to Petition for Reconsideration IS DENIED, Supplement to Petition for Reconsideration IS DISMISSED, and Motion for Stay IS DISMISSED.

13. IT IS FURTHER ORDERED, that Peninsula, within thirty days from the release date of this *Order* consummate the authorized assignments of the nine translators: K257DB, Anchor Point; K265CK Kachemak City; K272CN Homer; K272DG and K285EG, Seward; K274AB and K285AA Kodiak; K283AB Kenai/Soldotna; K285EF, Kenai, Alaska (File Nos. BALFT-970701TR through TZ) and that, if Peninsula fails to consummate the authorized assignments, the staff rescind the November 6, 1997 and December 10, 1998 license renewal grants, cancel the relevant call signs, and terminate the translators' operating authority.

14. IT IS FURTHER ORDERED, that the application for a license to cover the construction permit of station KPFN(FM), Seward, Alaska, (File Number BLH-990125KE), IS GRANTED.

15. IT IS FURTHER ORDERED, that the waivers of 47 C.F.R. § 74.1231(b), for K272DG and K285EG, Seward, Alaska, ARE TERMINATED 60 days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary